

PETITION OF APPEAL

TO: STATE POLICE COMMISSION
DEPARTMENT OF AGRICULTURE & FORESTRY BUILDING
5825 FLORIDA BLVD, SUITE 1180
BATON ROUGE, LOUISIANA 70806

BY: TROOPER DERECK CLARK


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SEP 12 2018

State Police Commission

The Petition of Appeal, through undersigned counsel, of Trooper Dereck Clark, with respect, represents:

1.

Appellant is employed by the State of Louisiana Department of Public Safety and Corrections, Public Safety Services. He serves with permanent status in the classification of Trooper at Troop L. Appellant has nearly five years of State Police service.

2.

Appellant files this appeal pursuant to Chapter 13 of the State Police Commission Rules.

3.

By letter dated September 5, 2018, Appellant was suspended without pay for 12 hours. A copy of the letter of suspension is attached hereto as Exhibit "A".

4.

Appellant denies the allegations as written in the letter of suspension. Appellant avers that the disciplinary action imposed is unwarranted and unjustified.

5.

Appellant avers that the letter of discipline fails to contain the detail and specificity required by Chapter 12 of State Police Commission Rules. It is vague and indefinite.

6.

Appellant shows that he acted, at all times, in accordance with his training, experience and knowledge.

7.

Alternatively, Appellant avers that the penalty meted is too severe.

8.

The February 23, 2017 incident occurred more than one and one-half years ago and any discipline is belated and long after the expiration of the time limits.

9.

The incident involved a dangerous pursuit in New Orleans which ended with the suspects flipping their vehicle near the doorstep of St. Augustine High School.

10.

The suspects were heavy armed and presented a clear danger to the school children and residents in the area.

11.

Due to the immediate threat of danger, appellant decided to attempt to use his push bumper to confine the subjects inside the vehicle by placing the bumper against the door. This turned out to be unsuccessful but was a good forth effort on his part. This was not a crash situation. It was a legal intervention.

12.

A foot chase ensued after the best effort on appellant's part. He was injured in the foot chase, but continued to help protect the public and capture the subjects – a convicted felon with weapons and narcotics, black clothing and black ski masks.

13.

Appellant made a calculated choice to respond to the dangerous situation as he did. This was not a crash as contemplated by the policy. Appellant did not operate the vehicle in a careless manner, but attempted to use his push bumper to immediately de-escalate and control a very dangerous situation that put a lot of pail in peril.

14.

Interestingly, Appellant received a Meritorious Service Award and a Service Injury Award for the Excellent Performance of his duties on this matter. See Exhibits B & C.

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15.

It is totally incongruent that he is now being punished for his Excellent Performance.

RELIEF REQUESTED:

- 1) Rescission of the disciplinary action;
- 2) Alternatively, reduction of the penalty imposed;
- 3) Expungement of appellant's personnel record;
- 4) Payment of all back wages and emoluments;
- 5) Legal interest; and
- 6) Reasonable attorney fees.

WHEREFORE, Trooper Dereck Clark prays that this Petition of Appeal be deemed good and sufficient and after all legal delays and due proceedings are had, that the relief requested hereinabove be granted.

Appellant further prays for all general and equitable relief.

Respectfully submitted:

AVANT & FALCON

BY: 

Floyd J. Falcon, Jr., #5424
429 Government Street
Post Office Box 2667
Baton Rouge, Louisiana 70821
Telephone: (225) 387-4462

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LAW OFFICES
AVANT & FALCON
P. O. BOX 2567
BATON ROUGE, LA 70821
TELEPHONE (225) 387-4462



JOHN BEL EDWARDS
GOVERNOR

KEVIN W. REEVES, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

SEPTEMBER 5, 2018
4750/0501/MMG/18-21586
HQ-2-1567-18

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State Police Commission

TROOPER DERECK CLARK
TROOP L

FS#17-0045, IA#N18-006, OLA#058688
VIA PERSONAL DELIVERY

RE: SUSPENSION

Dear Trooper Clark:

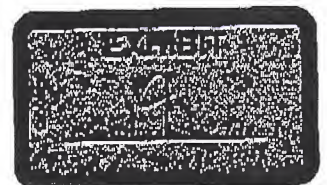
Pursuant to the authority granted by State Police Commission Rules 12.1, 12.2, and delegated to me by Colonel Kevin Reeves, you are hereby notified that you are being suspended without pay and allowances for 12 hours. Your suspension will begin at 0500 hours on September 24, 2018 and will end at 1700 hours that date. You shall report back to your assigned duty station at 0500 hours on September 26, 2018. You are suspended for the following reasons:

On February 23, 2017, at approximately 1045 hours, while on-duty in your assigned State Police unit, you were involved in a preventable crash in Orleans Parish. You responded to assist Trooper Carlos Pineda who was in an active pursuit of a vehicle that fled from a traffic stop on Rampart Street at St. Bernard Avenue. You eventually caught up to the pursuit and observed two occupants in the front of the suspect vehicle. The driver of the suspect vehicle aggressively overtook several vehicles nearly striking them while traveling on AP Turcaud, and the driver of the suspect vehicle lost control. The suspect vehicle jumped the grassy median, flipped, and struck a telephone pole in front of a public school on AP Turcaud.

You advised in your written incident report that you "decided to use your push bumpers in an attempt to stop the occupants from exiting the vehicle and causing further harm to the public." During your "attempt to place your vehicle's push bumpers on the vehicle," the driver exited the vehicle from the passenger side as you were "placing" your unit against the vehicle. Your unit's push bumpers "made slight impact" with the driver, however, he fled on foot.

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DISP 4117



Trooper Clark
September 5, 2018
Page 2

As evidenced by the recording from your in car camera¹, your unit made significant impact with the suspect vehicle after striking one of the fleeing occupants. There was damage to your unit in the amount of \$3,740.33. The Fleet Crash Review Board² determined that a crash occurred, not use of legal intervention, and that the crash was preventable. I agree.

Your actions were in violation of Louisiana State Police Policy and Procedural Order No. 242(2)(ii) - VEHICLE USE, MAINTENANCE, AND REPAIR, which states in pertinent part:

Personnel shall drive all Department vehicles with prudence and care, mindful that abuse, misuse or recklessness reduces the operating efficiency of the Department's fleet.

This is not the first time you have been disciplined for violating this policy. By letter dated September 21, 2016, you were counseled for a preventable crash in which you were involved on September 24, 2015 in Orleans Parish. By letter dated January 26, 2017, you were reprimanded for a preventable crash in which you were involved on June 21, 2016 in Orleans Parish.³

Any future violations of this or any nature may result in more severe discipline, up to and including termination.

You have the right to appeal this action to the Louisiana State Police Commission. The time limits and procedure for appealing are contained in Chapter 13 of the State Police Commission Rules. A copy of Chapter 13 can be obtained from the State Police Commission. Their current mailing address is P.O. Box 66555, Baton Rouge, LA 70896-6555. Their current telephone number is (225) 925-7057 and their fax number is (225) 925-7058.

Your attention is directed to Louisiana State Police Policy and Procedure Order No. 2015.iv, which states:

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¹ A copy of the video is maintained by Fleet Operations and is available for your review upon your request.
² The Fleet Crash Review Board consisted of Captain Kelly Dupuy, Lt. Hiram Mason, and Sgt. Sammy Robinson.
³ Copies of these letters are maintained by Internal Affairs and are available for your review upon your request.

Trooper Clark
September 5, 2018
Page 3

iv) No officer shall work escorts, paid off-duty details, or overtime in any pay period wherein he has taken leave without pay, been suspended without pay, placed on forced or administrative leave, or worked at a reduction in pay as a result of a disciplinary action unless authorized by the appointing authority.

Sincerely,



Lt. Col. Mike Noel
Assistant Superintendent, Louisiana State Police

c: Lt. Col. Jay D. Oliphant
Major James McGuane
Captain John Riles
Internal Affairs
Office of Legal Affairs

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State of Louisiana

Department of Public Safety and Corrections
Office of State Police



Certificate of Award

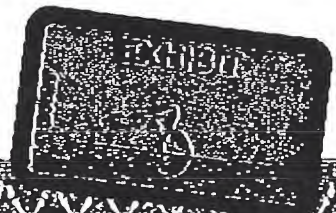
Trooper Dereck Clark

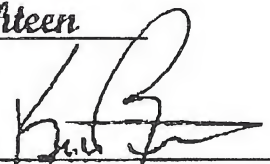
is hereby presented the

Meritorious Service Award

For exemplary dedication to the department and excellence in the performance of your duties on February 23, 2017, when the felony arrests of two suspects prevented further crimes being committed.

Awarded this 17th day of May
In the year of our Lord Two Thousand and Eighteen





Superintendent

State of Louisiana

Department of Public Safety and Corrections
Office of State Police



Certificate of Award

Trooper Dereck Clark

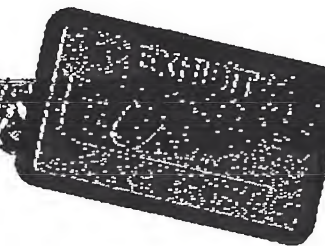
is hereby presented the

Service Injury Award

For exemplary dedication to the department and excellence in the performance of your duties on February 23, 2017 when you sustained a MCL tear, ACL tear and knee fracture during a pursuit.

Awarded this 17th day of May
In the year of our Lord Two Thousand and Eighteen

Superintendent





State Police Commission

Post Office Box 66555
Baton Rouge, LA. 70896-6555
Phone (225) 925-7057
Fax (225) 925-7058
www.laspc.com

John Bel Edwards
Governor

Jason Hannaman
Executive Director

Revised

September 28, 2018

Senior Dereck Clark
[REDACTED]

Re: Appeal of Dereck Clark (Department of Public Safety and Corrections,
Office of State Police) Docket No. 18-240-S

NOTICE OF DOCKETING

The appeal referenced above was filed in this office on September 12, 2018, by the office of Floyd J. Falcon, Jr. via fax delivery. The fact that this appeal was docketed does not constitute an opinion as to the sufficiency or validity of the appeal and does not prevent its dismissal under State Police Commission Rule 13.5.

Sincerely,

A blue ink signature of Jason Hannaman, consisting of a large, stylized 'J' followed by a horizontal line.

Jason Hannaman
Executive Director

cc: Colonel Kevin Reeves
M. Lenore Feeney
Floyd J. Falcon, Jr.
Office of Legal Affairs
Internal Affairs

FLOYD J. FALCON, JR
DANIEL L. AVANT
MARK E. FALCON

AVANT & FALCON

A LAW CORPORATION
429 GOVERNMENT STREET
BATON ROUGE, LOUISIANA 70802
TELEPHONE (225) 387-4462
TELEFAX NUMBER (225) 387-4547

ADDRESS MAIL TO:
P. O. BOX 2667
BATON ROUGE, LA 70821

November 2, 2018

Jason Hannaman
Executive Director
State Police Commission
PO Box 66555
Baton Rouge, Louisiana 70896

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Re: Dereck Clark

Dear Mr. Hannaman:

We previously filed an Appeal on behalf of Dereck Clark.

Subsequent to the Appeal that we filed Mr. Clark received a communication from Lt. Colonel Mike Noel that they had reconsidered his disciplinary action and determined no disciplinary action was warranted.

Enclosed is a copy of Lt. Colonel Noel's letter.

Mr. Clark has advised me that he is satisfied and would like to dismiss his pending Civil Service Appeal.

Yours truly,

AVANT & FALCON

Floyd J. Falcon, Jr.

FJFjr:hda

cc: Michelle Giror
David Young
Jay O'Quinn
Dereck Clark



JOHN BEL EDWARDS
GOVERNOR

KEVIN W. REEVES, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

SEPTEMBER 28, 2018
4750/0501/MMG/18-21666
HQ-2-1572-18

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State Police Commission

TROOPER DERECK CLARK
TROOP L

FS#17-0045, IA#N18-006, OLA#058688
VIA PERSONAL DELIVERY

RE: Crash on February 23, 2017

Dear Trooper Clark:

Your response to the intended 12 hour suspension letter you received relating to the above referenced fleet crash has been received by me. I have duly considered your response. After further review and consultation, I have determined that the crash was a result of your use of legal intervention and no disciplinary action is warranted.

Sincerely,

Lt. Col. Mike Noel
Assistant Superintendent, Louisiana State Police

c: Lt. Col. Jay D. Oliphant
Major James McGuane
Captain John Riles
Internal Affairs
Office of Legal Affairs
Fleet Safety Officer

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Fax (225) 925-7058
www.laspc.com

John Bel Edwards
Governor

Jason Hannaman
Executive Director

November 13, 2018

Trooper Dereck Clark



In Re: Appeal of Dereck Clark
(Department of Public Safety and Corrections, Office of State Police)
Docket No. 18-240-S

Dear Trooper Clark,

On November 5, 2018, I received correspondence on your behalf wherein your counsel advised that you wish to dismiss your pending State Police Commission Appeal. Enclosed with the letter was correspondence from the Appointing Authority, dated September 28, 2018, determining that "the crash was a result of your use of legal intervention and no disciplinary action is warranted." Accordingly, your request to withdraw your appeal has been received and approved. This constitutes a final disposition of this appeal.

Sincerely,

A blue ink signature of Jason Hannaman, written in a cursive style.

Jason Hannaman, PHR, SHRM-CP
Executive Director
Louisiana State Police Commission

cc: Michelle Giroir
Floyd Falcon
Lenore Feeney